

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	4:04CR3018
Plaintiff,)	
)	MEMORANDUM AND ORDER ON
v.)	MOTION AND REQUEST FOR
)	HEARING PURSUANT TO RULE
STACEY K. COSTELLO,)	35(b) AND MOTION AND
)	REQUEST FOR ADMISSION TO
Defendant.)	RESIDENTIAL DRUG ABUSE
)	TREATMENT UNDER THE U.S.
)	BUREAU OF PRISONS

Filing 42 is the defendant's Motion and Request for Hearing Pursuant to Rule 35(b). She asks that "a hearing be conducted pursuant to Rule 35(b) and that the Defendant be granted her Motion for a downward departure." The plaintiff's brief rightly points out that Rule 35 allows the court to reduce a sentence on the basis of substantial assistance of the defendant upon "the government's motion." The government has not filed a motion under Rule 35.

It also is true that the defendant signed a plea agreement in which she waived her right to challenge the government's decision not to file or seek a downward departure pursuant to Rule 35(b), "except upon a substantial threshold showing . . . that any such decision was based upon an unconstitutional motive relating to [the defendant's] race, religion, gender, or national origin, or . . . an appropriate showing of violation of [the defendant's] Sixth Amendment Right to Counsel." No such threshold showing has been made.

Filing 43 is a Motion and Request for Admission to Residential Drug Abuse Treatment under the U.S. Bureau of Prisons. No showing has been made that any

recommendation needs to be made or that the defendant's drug treatment needs, whatever they are, are not being offered to her or that this court has any authority to intrude into the Bureau of Prisons' programs regarding drug abuse treatment.

IT IS ORDERED that:

1. the Motion and Request for Hearing Pursuant to Rule 35(b), filing 42, is denied; and
2. the defendant's Motion and Request for Admission to Residential Drug Abuse Treatment Under the U.S. Bureau of Prisons, filing 43, is denied.

Dated May 16, 2006.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge